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APR 29 2019

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
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**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION**

In re:

CLARK WARREN BAKER,

Debtor(s).

CHAPTER 7

Case No.: 2:15-bk-20351-BB  
Adv No: 2:15-ap-01535-BB

**ORDER DENYING DEFENDANT'S MOTION  
FOR STAY PENDING APPEAL OF  
CONTEMPT ORDER AND MOTION FOR  
LEAVE TO APPEAL**

JAMES MURTAGH, M.D.,

Plaintiff(s),

v.

CLARK WARREN BAKER,

Defendant(s).

Date: April 2, 2019  
Time: 10:00 AM  
Courtroom: 1539

The Court, having reviewed and considered debtor and defendant Clark Warren Baker's April 26, 2019 "Motion for (1) Stay Pending Appeal of Contempt Order and of Order Directing Turnover of All Computer Data; (2) for [sic] Leave to Appeal Order

1 Directing Turnover” [docket no. 468] (the “Motion”), hereby makes the following findings  
2 of fact and conclusions of law:

- 3 1. This Court’s April 24, 2019 “Order Holding Defendant Clark Warren Baker  
4 in Civil Contempt and Directing that He Be Incarcerated Until He Performs  
5 Certain Acts, etc.” [docket no. 466] (the “Civil Contempt Order”) is not  
6 punitive in nature and is well within the scope of this Court’s jurisdiction to  
7 issue civil contempt orders, as it is narrowly framed to obtain information  
8 from the debtor/defendant (“Baker”) that this Court requires to resolve  
9 issues that remain in dispute in this matter.
- 10 2. More specifically, the plaintiff has sought by way of this action not only  
11 monetary relief but also injunctive relief – an injunction requiring Baker to  
12 remove defamatory material about plaintiff that he has posted on the  
13 internet and prohibiting him from posting such information in the future.  
14 Although this Court has made a series of factual findings as “issue  
15 sanctions” based upon Baker’s failure to comply with orders of this Court  
16 that may be adequate to support an award of monetary relief, absent  
17 additional information of the kind sought by the plaintiff, it would be difficult  
18 for this Court to formulate a mandatory injunction that would be sufficiently  
19 specific to be enforceable.
- 20 3. Baker’s continued failure and refusal to comply with this Court’s orders  
21 concerning the turnover of electronic information have left this Court with  
22 no other option but to use its contempt powers in an effort to obtain the  
23 required information. It would be pointless exercise for plaintiff to obtain a  
24 monetary judgment against Baker for damage caused by his defamatory  
25 postings if he is unable to obtain and enforce an injunction that prohibits  
26 Baker from continuing to engage in this misconduct in the future.
- 27 4. Contrary to Baker’s contentions, Baker has been ordered repeatedly to  
28 turnover electronic data to plaintiff, to give plaintiff’s expert and this Court’s

1 neutral expert access to data, to restore data that he has deleted, to  
2 preserve electronic data, to instruct others in possession of his electronic  
3 data to turnover that data to the plaintiff, to the plaintiff's expert and to the  
4 Court's neutral expert and to explain his inability to do so if he is unable to  
5 comply with any of the Court's directives regarding the restoration or  
6 turnover of data. These orders include, without limitation:

- 7 a. this Court's October 5, 2017 order [docket no. 291];
- 8 b. this Court's December 14, 2017 order [docket no. 312];
- 9 c. this Court's April 13, 2018 order [docket no. 339];
- 10 d. this Court's June 26, 2018 order [docket no. 362];
- 11 e. this Court's August 16, 2018 order [docket no. 369]; and
- 12 f. this Court's September 29, 2018 order [docket no. 393].

13 5. Based on Baker's failure to comply with the Court's orders concerning the  
14 preservation and turnover of data and devices, it has become clear to this  
15 Court that drastic measures are required to cause Baker to comply with  
16 orders of this Court and that it may be necessary to obtain copies of  
17 Baker's data from third parties, as Baker has been unwilling to provide this  
18 data himself. It is for this reason that the Contempt Order conditions  
19 Baker's release from incarceration on, among other things, Baker's  
20 supplying information concerning the existence and location of backup  
21 copies of his data. See Civil Contempt Order, p. 8, lines 6 through 10.

22 6. In an effort to avoid infringing upon Baker's Fifth Amendment rights, this  
23 Court has narrowly tailored the questions that Baker is required to answer  
24 in order to obtain release from incarceration to avoid requiring him to  
25 disclose information that might incriminate him. Baker has yet to  
26 demonstrate how answering such questions as (i) whether he or anyone  
27 else has any backup copies of his electronic data, (ii) when and how he  
28 disposed of any electronic devices that he no longer uses, (iii) how much

1 he has paid his attorneys in this action; (iv) the source of any monies used  
2 to pay his attorneys; (v) the source of any money used to pay prior  
3 sanctions awarded in his action; (vi) how much compensation he has  
4 made from any source since January 1, 2016, and (vii) the names of any  
5 persons who paid him any compensation since January 1, 2016, would  
6 give rise to a substantial risk of self-incrimination.

7 7. Thus, it does not appear to this Court that Baker has any likelihood of  
8 succeeding on the merits of his appeal of the Contempt Order or its April  
9 23, 2019 order directing that information given to the Court's neutral  
10 expert be turned over to plaintiff's expert [docket no. 464]. This Court has  
11 been exceedingly patient with Baker's failure to comply with its orders,  
12 has given Baker numerous opportunities to comply with its orders and has  
13 utilized lesser sanctions where possible in an effort to obtain compliance –  
14 all without success. The Court is left with no alternative but to hold Baker  
15 in civil contempt and direct that he be incarcerated until he provides at  
16 least a portion of the information previously requested by this Court's prior  
17 orders.

18 8. Pursuant to Fed. R. Bankr. Proc. 8004, although a motion for leave to  
19 appeal must be filed in the first instance with the Bankruptcy Court, Rule  
20 8004(c) requires the Bankruptcy Court to transmit that motion to the  
21 district court or to the Bankruptcy Appellate Panel for resolution. It is not  
22 for this Court to rule on Baker's motion for leave to appeal any  
23 interlocutory orders.

1 In light of the foregoing,

2 **IT IS HEREBY ORDERED** as follows:

- 3 1. Baker's motion for a stay pending appeal is **DENIED**.
- 4 2. To the extent that Baker intended to move this Court for leave to appeal any
- 5 of its prior orders, the Motion is **DENIED** on the ground that this Court lacks
- 6 the authority to grant the requested relief.

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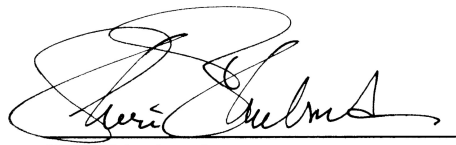
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25 Date: April 29, 2019

26   
27 Sheri Bluebond  
28 United States Bankruptcy Judge